



[4830-01-P]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9644]

RIN 1545-BK44

Net Investment Income Tax; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9644) that were published in the **Federal Register** on Monday, December 2, 2013 (78 FR 72394). The final regulations provide guidance on the general application of the Net Investment Income Tax and the computation of Net Investment Income.

DATES: This correction is effective **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER** and applicable December 2, 2013.

FOR FURTHER INFORMATION CONTACT: Adrienne M. Mikolashek, at (202) 317-6852 (not a toll free number).

SUPPLEMENTARY INFORMATION:

**Background**

The final regulations (TD 9644) that are the subject of this correction is under section 1411 of the Internal Revenue Code.

## Need for Correction

As published, the final regulations (TD 9644) contain errors that may prove to be misleading and are in need of clarification.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

### PART 1— INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \*\*\*

Par. 2. Section 1.469-11 is amended by revising the first sentence of paragraph (b)(3)(iv)(C)(1) and the last sentence of paragraph (b)(3)(iv)(C)(3) Example 4. to read as follows:

§1.469-11 Effective date and transition rules.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iv) \* \* \*

(C) \* \* \* (1) \* \* \* An individual, estate, or trust also may regroup activities, in the manner described in paragraph (b)(3)(iv)(A) of this section, on an amended return only if the changes reported on such amended return cause the taxpayer to meet the Eligibility Criteria for the first time beginning in the taxable year for which the amended

return is applicable and that the taxable year is not closed by the period of limitations on assessments under section 6501. \* \* \*

\* \* \* \* \*

(3) \* \* \*

Example 4. \* \* \* Third, Y may file an original or an amended return to regroup in a manner different from groupings in effect prior to Year 1 and different from the Year 1 groupings (for example, Y could choose to group Activity C and D into a single activity, thus causing Y to have two groups; Group A-B and Group C-D).

\* \* \* \* \*

Par. 3. Section 1.1411-0 is amended by revising the entries in the table of contents for §1.1411-3 (c)(2)(ii) and (iii) to read as follows:

§1.1411-0 Table of contents of provisions applicable to section 1411.

\* \* \* \* \*

§ 1.1411-3 Application to Estates and Trusts.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) Step two.

(iii) Step three.

\* \* \* \* \*

Par. 4. Section 1.1411-2 is amended by revising the first sentence of paragraph (b)(2) to read as follows:

§1.1411-2 Application to individuals.

\* \* \* \* \*

(b) \* \* \*

(2) Example. During Year 1(a year in which section 1411 is in effect), A, an unmarried United States citizen, has modified adjusted gross income (as defined in paragraph (c) of this section) of \$190,000, which includes \$50,000 of net investment income. \* \* \*

\* \* \* \* \*

Par. 5. Section 1.1411-3 is amended by revising the second sentence of paragraph (c)(3)(ii)(A) and the first sentence of paragraph (c)(3)(iii)(B) to read as follows:

§1.1411-3 Application to estates and trusts.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) \* \* \* (A) \* \* \* The undistributed net investment income for the S portion is \$27,600 and is determined as follows:

\* \* \* \* \*

(iii) \* \* \*

(B) The adjusted gross income for the ESBT is \$40,000 and is determined as follows: \* \* \*

\* \* \* \* \*

Par. 6. Section 1.1411-4 is amended as follows:

1. The first sentence of paragraph (d)(4)(i)(C) Example 2. (i) is revised.

2. The language “deduction” in the last sentence of paragraph (f)(2)(v) Example 1.(iv) is removed and “deductions” is added in its place.
3. The language “A” in the third sentence of paragraph (f)(2)(v) Example 2. (iii) is removed and “A’s” is added in its place.
4. Paragraph (f)(3)(iii) is revised.
5. The language “§ 1.171-2T(a)(4)(i)(C)” in paragraph (f)(3)(vii) is removed and “§ 1.171-2(a)(4)(i)(C)” is added in its place.
6. The second sentence of paragraph (f)(4)(ii) Example1. (iii) is revised.
7. The language “one or more” in paragraph (g)(7)(i) introductory text is removed and “a” is added in its place.
8. The language “activities” in paragraph (g)(7)(i) introductory text is removed and “activity” is added in its place.
9. Paragraph (h)(2) introductory text is revised.
10. The language “.2” in paragraph (h)(5) Example 1. (ii) is removed and added in its place “0.2”.

The revisions read as follows:

§1.1411-4 Definition of net investment income.

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(i) \* \* \*

(C) \* \* \*

Example 2. \* \* \* (i) PRS, a partnership for Federal income tax purposes, operates an automobile dealership. \* \* \*

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(iii) Taxes described in section 164(a)(3). State, local, and foreign income, war profits, and excess profit taxes described in section 164(a)(3) that are allocable to net investment income pursuant to paragraph (g)(1) of this section. Except to the extent specifically expected from section 275(a)(4), foreign income, war profits, and excess profit taxes are not allowed as deductions under section 164(a)(3) in determining net investment income if the taxpayer claims the benefit of the foreign tax credit under section 901 with respect to the same taxable year. For rules applicable to refunds of taxes described in this paragraph, see paragraph (g)(2) of this section.

\* \* \* \* \*

(4) \* \* \*

(ii) \* \* \*

Example 1. \* \* \*

(iii) \* \* \* Pursuant to paragraph (d) of this section, A takes into account the \$60,000 at ordinary loss from PRS and the \$50,000 of long term capital gain in the computation of A's net gain. \* \* \*

\* \* \* \* \*

(h) \* \* \*

(2) Applicable portion of a net operating loss. In any taxable year beginning after December 31, 2012, in which a taxpayer incurs a net operating loss, the applicable portion of such loss is the lesser of:

\* \* \* \* \*

Par. 7. Section 1.1411-5 is amended by revising paragraph (b)(2)(i) and (b)(2)(iii) to read as follows:

§1.1411-5 Trades or businesses to which tax applies.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \* (i) Income and gain recharacterization. To the extent that any income or gain from a trade or business is recharacterized as “not from a passive activity” by reason of §1.469-2(f)(2), §1.469-2(f)(5), or §1.469-2(f)(6), such trade or business does not constitute a passive activity within the meaning of paragraph (b)(1)(ii) of this section solely with respect to such recharacterized income or gain.

\* \* \* \* \*

(iii) Exception for certain portfolio recharacterizations. To the extent that any income or gain from a trade or business is recharacterized as “not from a passive activity” and is further characterized as portfolio income under §1.469-2 (f)(10) or §1.469-2(c)(2)(iii)(F), then such trade or business constitutes a passive activity within the meaning of paragraph (b)(1)(ii) of this section solely with respect to such recharacterized income or gain.

\* \* \* \* \*

Par. 8. Section 1.1411-10 is amended as follows:

1. Revise paragraph (c)(5)(i)(B).
2. In paragraph (h) Example 2. (ii)(A), revise the first sentence.

The revisions read as follows:

§1.1411-10 Controlled foreign corporations and passive foreign investment companies.

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(i) \* \* \*

(B) Decreasing the amount of investment income determined for chapter 1 purposes under section 163(d)(4)(B) by the amount included in gross income for chapter 1 purposes under section 951(a) or section 1293(a) that is attributable to a CFC or QEF with respect to which an election under paragraph (g) of this section is not in effect; and

\* \* \* \* \*

(h) \* \* \*

Example 2. \* \* \*

(ii) \* \* \* (A) In 2016, A does not include the \$15,000 section 951(a)(1)(A) income inclusion in A's net investment income under section 1411(c)(1)(A)(i) and §1.1411-1(a)(1)(i). \* \* \*

\* \* \* \* \*



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